COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2) (b)}

Description of Case

Criminal Jail Appeal No. 48 of 2005

Sher Singh alias Vikki s/o Ram Singh,
R/o Village Gagaon, Thana Dhangari,
District Dhangari, Nepal

... Appellant

Versus

State of Uttarakhand

... Opposite Party

Sri Pramod Tiwari, Amicus curiae for the appellant
Sri Amit Bhatt, learned Addl. G.A. for the respondent

Date: April 18, 2007

(Dharam Veer, J.)

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

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Sri Amit Bhatt, Addl. Government Advocate for the respondent.

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Hon. Dharam Veer, J.

The present appeal has been preferred against the judgment and order dated 08.12.2004 passed by Special Judge, Pithoragarh in Special Sessions Trial No. 6 of 2003 convicting the appellant U/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as N. D. P. S. Act) and sentencing him to undergo rigorous imprisonment for five years with a fine of Rs. 25,000/- and in default of payment of fine, to undergo further additional rigorous imprisonment of one year.

2. Briefly narrated, the prosecution story is that on 29.05.2003 at about 6 a.m. at a distance of 100 paces from the gate of Police Station, Jauljibi towards Baldhar, 950 grams of illicit Charas was recovered from the possession of the accused-appellant. He did not possess any licence for possessing the same. Recovery memo Ex. Ka. 1 was prepared at the spot, on the basis of which, chick F.I.R. Ex. Ka. 2 was scribed. The case was registered vide G. D. No. 15 dated 29.05.2003 at 7.45 hours. During the course of investigation, site plan of the place of recovery Ex. Ka.4 was prepared and the case property was sent for chemical examination to the Forensic Science Laboratory. The report of the Forensic Science Laboratory, Agra is Ex.Ka.9.

3. After completion of the investigation, charge sheet Ex. Ka. 10 was submitted against accused Sher Singh U/S 20 of the N.D.P.S. Act in the Court.

5. The learned Sessions Judge/Special Judge, Pithoragarh framed charge U/s 20 for the N.D.P.S. Act against the accused, who pleaded not guilty and claimed to be tried.

6. The prosecution, in support of its case, examined P.W. 1 S.I. Udai Veer Singh, P.W.2 Const. Ishwari Datt, P.W. 3 Const. Clerk Prakash Chandra Punetha, P.W. 4 Station Officer Kundan Singh and P.W. 5 Const. Pramod Kumar.

7. In his statement S.I. Udai Veer Singh deposed in the Court that on 29.05.2003 he was posted as Station Officer, Police Station, Jauljibi and went for checking of the vehicles along with Const. Ishwari Datt Sharma, Bihari Lal and Padam Singh and vide Report No. 5 at 4.30 a.m., they were doing checking. During Checking, in front of Police Station, in the main road, they spotted a person coming from Baldhar, but when he saw the police personnel, he turned back and started running. When he was asked to stop, he did not stop running. The police party chased him and they caught him at 6 a.m., at a distance of 100 paces. When they enquired him the reason for running, he told that he possessed Charas in his bag. When asked whether he wanted to be searched before a Magistrate or a Gazetted Officer, he told that he had already been caught and he did not want to be searched before a Magistrate or a Gazetted Officer. On being asked, he informed that he is Sher Singh Mallah alias Vikki s/o Ram Singh r/o Village Dhangari, Nepal. On his search, 950 Grams of Charas was recovered. Out of the same, 50 Grams Charas was taken out for sample and was kept in a separate container. Rest quantity of Charas was kept in the same container. The accused was then sent to the Police Station along with the case property.

8. P.W.2 Const. shwari Datt Sharma supported the prosecution case and narrated the same story as told by P.W.1 S.I. Udai Veer Singh.

9. P.W.3 Const. Clerk Prakash Chandra Punetha stated that on 29.05.2003 he was posted as Constable Clerk at Police station Jauljibi and a case was registered against the accused on the basis of memo of recovery prepared by P.W. 1 Udai Veer Singh. He proved chick F.I.R. Ex.Ka.2 of the same.

10. P.W.5 Const. Pramod Kumar is the witness of taking sealed bundle along with necessary papers to Forensic Science Laboratory, Agra. He stated that on 7.6.2003 he was posted at Police Station Jauljibi. On that day, he brought the case property from Police station Jauljibi to S.D.M. Dharchula along with necessary papers for being taken to the Forensic Examination. The Sub Divisional Magistrate unsealed the case property, and after physical verification, he against got the same sealed and attested his signatures. In this regard he proved Ex. Ka.8. As it became late, he deposited the case property again in Police Station Jauljibi on that date and on the next day at 7.30 a.m. vide Report No. 16, he proceeded for Agra. He proved that he kept the article safely and produced the same in Forensic Science Laboratory, Agra on 11.06.2003 vide receipt Ex.Ka.11.

11. P.W.4 S.I. Kundan Singh deposed that on 05.06.2003, he was posted as Station Officer, Police Station, Askot. AS per the orders of the Deputy Superintendent of Polcie, Dharchula, investigation of the case was entrusted to him. Earlier the case was being investigated by S.I. Hridaya Narain Sharma, Police Station, Dharchula. On 05.06.2003, he recorded the statement of complainant Udai Veer Singh and on his pointing, he examined the place of incident and prepared site-plan Ex.4. He also recorded the statements of Const. Ishwari Datt Sharma and Const. Bihari Lal. On 08.06.2003, he interrogated Const. Padam Singh, Prakash Punetha; and recorded the statement of Const. Pramod Kumar. He sent Const. Pramod Kumar for examination on 7.6.2003 before the S. D. M. vide report no. 16 at 12.15 hours. On the same date as no time was left to sent Const. Pramod Kumar to Forensic Science Laboratory, Agra, the case property was kept in the Police Station. On 08.06.2003, he was sent to Agra. He proved Ex.Ka.5 to Ex. Ka.8 i.e. Report No. 16 dated 07.06.2003,

Report No. 23 dated 07.06.2003, Report No. 16 dated 08.06.2003 and Report No. 22 dated 15.06.2003, respectively. He also stated that he recorded the statement of Diwan Singh and report Ex.Ka.9 was received from Forensic Science Laboratory, Agra. He proved the charge-sheet Ex.Ka.10 submitted after the completion of the investigation against the accused.

12. The accused did not examine any witness in his defence. In his statement U/s 313 Cr.P.C., the accused denied the charge levelled against him and submitted that he was boarding the bus bound for Delhi from Baluakot to Pithoragarh. Some police personnel coming from Dharchula in plain clothes alighted at Jauljibi. They asked him and his two other companions to accompany them to Police Station. His companions were let off at Police Station on arrival of their relatives and he was falsely implicated in this case.

13. After hearing the learned counsel for the parties and examining the materials placed on record, the learned Special Judge, Pithoragarh convicted the accused-appellant as above. Feeling aggrieved, the accused-appellant has filed the present appeal.

14. During the course for argument, Sri Promod Tiwari, the learned Amicus Curiae has confined his argument only on the quantum of the sentence awarded to the accused as he does not want to say anything regarding finding on conviction of the appellant under Section 20 for the N.D.P.S. Act. He submitted that the quantity of Charas recovered was only 950 grams and thus it was not a commercial quantity and, therefore, the learned Special Judge, Pithoragarh, ought to have taken a lenient view keeping in mind the pecuniary condition and age of the accused-appellant.

15. Sri Amit Bhatt, the learned A.G.A., on the other hand, supported the judgment of the trial Court and submitted that the judgment and order under appeal do not call for interference.

16. I have heard learned Amicus Curiae and the learned Addl. Government Advocate for the State and perused the entire records.

17. After considering the facts and circumstances of the case and hearing the learned counsel for the parties and going through the materials placed on record, I find that the conviction of the accused-appellant is perfectly justified and his conviction is based on proper appreciation of the evidence and the materials placed before the trail Court. The provisions of N.D.P.S. Act were also adhered to.

18. The learned Addl. Government Advocate also conceded that the quantity of the Charas recovered is not a commercial quantity.

19. In the Notification specifying small quantity and commercial quantity of Psychtropic Substances vide S. O. 1055 (E) dated 19th October, 2001, at SL. No. 23, *Charas* (cannabis) is mentioned, wherein small quantity is shown as 100 grams whereas the commercial quantity is shown as 1 kg. Thus, apparently, the quantity of the recovered Charas was not a commercial quantity.

20. In view of the above and considering the pecuniary condition of the appellant and the fact that he was only 27 Years old on the date of the incident, the appeal is partly allowed and the sentence of 5 years R.I. and a fine of Rs. 25,000/-(Ruppes Twenty Five Thousand only) and in default to undergo further rigorous imprisonment of 1 year U/s 20 of N.D.P.S. Act as awarded by the Special Judge, Pithoragarh is modified to the extent that instead of the above imprisonment, the accused-appellant shall undergo 4 years R.I. and shall also pay a fine of Rs 25,000/- (Ruppes Twenty Five Thousand only) for committing the offence punishable U/s 20 of the N.D.P.S. Act and in default of payment of fine he shall further undergo rigorous imprisonment for 6 months.

21. The period for which the accused-appellant remained in jail during the trial and the pendency of this appeal shall be adjusted from the punishment awarded to him.

Dated: April 18,2007 **(Dharam Veer, J.)**
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